APPENDIX A.

PROVISIONS OF TENNESSEE CODE ANNOTATED IMPOSING CORPORATE FRANCHISE TAX FOR TAXABLE YEARS 1963 AND 1964.

67-2901. Short title.—This chapter may be cited and referred to as "The Franchise Tax Law."

67-2902. Corporation subject to tax.—All corporations organized under the laws of this state, other than those organized for general welfare and not for profit, and all corporations organized under the laws of any other state or country for profit and doing business in Tennessee, shall, without exception other than as provided in Section 67-2911, pay to the commissioner of revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax hereby imposed shall be paid for the privilege of engaging in business in corporate form in this state and shall be in addition to all other taxes levied by any other statute.

Every such taxable entity organized and existing under and by virtue of the laws of this or any other state, territory or country, or organized and existing without any specific statutory authority, now or hereafter doing business within this state, without domesticating or qualifying to do business in this state, or while its charter is forfeited, revoked or suspended, shall as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this chapter.

Any corporation organized under the laws of the state of Tennessee whose sole expressed corporate purpose is for the furthering of industrial development in communities throughout the state, and doing related matters thereto, and whose stockholders receive no income other than

interest or dividends on money invested in said corporation for constructing industrial buildings and whose officers receive no compensation shall be exempt from the payment of franchise and excise taxes.

The tax hereinbefore levied shall also be paid by all business trusts, commonly known as Massachusetts Trusts, for the privilege of doing business in Tennessee and the word "corporation" when used herein shall be deemed to include a business trust unless the particular context requires a different meaning.

67-2903. Corporations in receivership or trusteeship. —The tax imposed by this chapter shall apply to corporations whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction and shall continue to accrue until such time as the corporation has been actually and legally dissolved or withdrawn from this state.

67-2904. Rate of tax.—The privilege tax hereby imposed shall be a tax of fifteen cents (15¢) on the one hundred dollars ($100), or major fraction thereof, of the issued and outstanding stock, surplus and undivided profits of each such corporation as shown by the books and records of such corporation at the close of its last fiscal year preceding the making of the sworn report hereinafter required.

67-2905. State purposes only.—The tax herein levied shall be a tax for state purposes only and no county or municipality shall have the power to levy a similar tax.

67-2906. Tax reduced for impairment of capital.— Where a corporation doing business without surplus or undivided profits has had the value of its capital stock impaired by operating deficits or other business losses, such as fire, flood, tornado, etc., and where such deficit or

loss is carried upon the books and records of the corporation as an impairment of capital, the measure of the tax shall be diminished by such loss or deficit.

67-2907. Reduction of tax for stock held by another taxpaying corporation.—The value of the stock held by any corporation in any other corporation paying the tax herein levied and actually doing business in this state shall be deducted from the measure of the tax of the first corporation.

67-2908. Inclusion of debt owed to or guaranteed by affiliate.—If the capital stock of a corporation which is a subsidiary of another corporation or closely affiliated therewith by stock ownership is inadequate for its business needs apart from credit extended or indebtedness guaranteed by the parent or an affiliated corporation, in determining the amount of capital, surplus and undivided profits of such corporation with respect to its liability for the tax imposed by this chapter, there shall be included in the measure of the tax the indebtedness owed to or guaranteed by the parent or an affiliated corporation. If necessary to apportion such indebtedness the methods of allocation hereinafter set forth shall be used.

67-2909. Value of tangible property as minimum tax base.—The measure of the tax hereby imposed shall in no case be less than the actual value of property owned, or property used, in Tennessee. In cases where part or all of the property is rented the actual value of property will be deemed to be the book value of all property owned as shown by the books and records of such corporation at the close of its last fiscal year preceding the making of the sworn report hereinafter required (excepting books with respect to investment costs kept pursuant to regulations of the interstate commerce commission) plus the value of

the rental property used which shall be determined by multiplying the net annual rental by the following multiples:

	Multiples
(a) Real property	5
(b) Machinery and equipment used in manufacturing and processing	3
(c) Furniture, office machinery and equipment	2
(d) Delivery or mobile equipment	1

The "net annual rental" shall mean the gross annual rental paid by the taxpayer less the gross rental received by the taxpayer for sub-rental. For the purposes of this section the term "used" shall mean only such property as is actually utilized by the corporation in the conduct of its principal business.

67-2910. Minimum tax.—The minimum tax payable under this chapter shall be ten dollars ($10.00).

67-2911. Credit for insurance premiums tax.—There shall be credited upon the tax hereby imposed such net amounts as are paid by insurance companies to this state as a tax upon gross premiums collected by them, not including the gross premium receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law. There shall be no other credits.

67-2912. Apportionment of capital of corporations doing business outside state.—In the case of corporations doing business in Tennessee and elsewhere the measure of the tax as herein above set forth shall be apportioned to Tennessee for the purpose of taxation in the manner set forth in Sections 67-2913—67-2918.

67-2913. Apportionment of manufacturers' and processors' capital.—If the principal business in this state is

manufacturing or if it is any form of collecting, assembling or processing of goods or materials, or if it is constructing or improving real property for others, the capital stock, surplus and undivided profits shall be apportioned to Tennessee on the basis of the ratio obtained by taking the arithmetical average of the following two (2) ratios:

(a) The ratio of the value of its real estate and tangible personal property in this state on the date of the close of the fiscal year, to the value of its entire real estate and tangible personal property, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of manufacturing, collecting, assembling or processing within this state, to the total cost of manufacturing, collecting, assembling or processing within and without the state.

67-2914. Apportionment of dealers' capital.—If the principal business in this state is selling, distributing, dealing in or using tangible personal property, the capital stock, surplus and undivided profits shall be apportioned to Tennessee on the basis of the ratio obtained by taking the arithmetical average of the following two (2) ratios:

(a) The ratio of the value of its real estate and tangible personal property in this state on the day of the close of its fiscal year, to the value of its entire real estate and tangible personal property then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, public or private warehouses, or branches located in Tennessee during the income year to the total sales made everywhere during said year.

67-2915. Apportionment of common carriers' capital. —If the principal business in this state is that of a common

carrier of persons or property for hire, then on the basis of the appropriate ratio as follows:

(a) RAILROADS.—The ratio obtained by taking the arithmetical average of the following two (2) ratios:

1. The gross receipts from railway operations on business beginning and ending within this state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state.

2. The mileage owned and operated within Tennessee plus mileage leased and operated within Tennessee as compared with the total of such mileage within and without this state.

(b) MOTOR CARRIERS.—The ratio obtained by taking the arithmetical average of the following two (2) ratios:

1. The gross receipts from operations on business beginning and ending within this state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state.

2. The ratio of the total franchise miles to which it holds or uses under lease, contract or otherwise, certificates of convenience and necessity from the interstate commerce commission of the United States or the railroad and public utilities commission of Tennessee within the state, to the total franchise miles which it holds or uses under such certificates from said commissions, and like commissions or agencies of other states, within and without the state, all as shown by the annual reports made by said corporation to the various commissions from which it holds certificates.

(c) RAIL AND MOTOR CARRIERS.—Where the corporation is engaged in transporting passengers and

property by both rail and motor, then the ratio of the sum of the miles within the state as computed under paragraphs (a) and (b) above, to the sum of the miles under said paragraphs within and without the state.

(d) PIPELINES.—The ratio obtained by taking the arithmetical average of the following two (2) ratios:

1. The gross receipts from operations on business beginning and ending within this state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state.

2. The ratio of the pipeline miles owned or operated or owned and operated within the state, to the miles of pipelines owned or operated or owned and operated within and without the state.

67-2916. Apportionment of capital on basis of gross receipts.—If the principal business is other than the manufacture or sale of tangible property or that of a common carrier of persons or property for hire, such proportion as its gross receipts in Tennessee during the income year is to its gross receipts for such year within and without the state.

67-2917. Variation from standard apportionment formulas.—If the apportionment provisions of this law do not fairly represent the extent of the taxpayer's business activity in this state, because of peculiar or unusual circumstances inherent in a particular case and create a hardship or injustice, the commissioner, upon application of the taxpayer and upon such showing, is authorized with the approval of the attorney-general, to adopt such other method of apportionment as would be fair and just under the facts of the case.

Provided, however, that when such other method of apportionment has once been established, it shall continue in effect so long as the peculiar or unusual circumstances remain substantially unchanged. In the event of federal legislation that would proscribe present Tennessee statutory formulas the commissioner of revenue, with the approval of the attorney-general, may adopt such alternate formulas as would be consistent with the federal legislation.

67-2918. Apportioned capital as basis for tax.—When corporations are doing business in Tennessee and elsewhere, only that part of the capital, surplus and undivided profits properly allocable to Tennessee by the manner of apportionment set forth in Sections 67-2913—67-2917, shall be used as a measure of the tax subject to the other provisions of this chapter with reference to a minimum measure and minimum tax.

67-2919. Administration—Rules and regulations.—The administration of this chapter and the collection of the tax herein levied are vested in the commissioner of finance and taxation who shall have the power to employ such persons as may be necessary in the administration of this chapter. There is apportioned annually an amount equal to two per cent (2%) of the receipts derived from the proceeds of the tax for the purpose of administering this chapter.

The commissioner of finance and taxation is granted full power and authority to adopt such reasonable rules and regulations, not in conflict with this or other statutes, as he may deem necessary to enforce the collection of the tax herein levied. Such rules and regulations, before being effective, shall be approved by the attorney-general and shall be printed. A copy of such rules and regulations shall

be furnished any interested party upon application and shall accompany the annual report form required to be filed under this chapter.

67-2920. Annual report—Contents.—Every corporation liable for the tax here imposed shall file with the commissioner of revenue on such form as he may prescribe an accurate and complete report, signed by its president or other principal officer under penalty of perjury, which report shall contain the following data:

(a) The name of the corporation, the state in which chartered, the location of its principal place of business in this state and the location of its principal or home office.

(b) The amount of capital stock subscribed and paid in, the amount issued and outstanding, the amount of surplus and undivided profits, together with the book value of each share of such stock as shown by the books and records of the corporation at the close of its last fiscal year.

(c) A comparative balance sheet as of the beginning and close of the last fiscal year as shown by the books and records of the corporation.

(d) Such other and further information as may be required by the commissioner for the reasonable enforcement of this chapter.

By the enumeration of the specific data required above it is not intended to divest the commissioner of his right to require all information which he may deem necessary for the enforcement of this chapter.

All reports must be filed with the commissioner of revenue on or before the first day of the fourth month following the close of taxpayer's fiscal year. The tax must be paid to the department of revenue at the time of filing the report.

67-2921. Reports confidential.—Reports of corporations made hereunder shall be confidential and shall not be divulged by the commissioner or his assistants except to a legislative committee appointed for the purpose of examining them, to the governor, to the attorney-general, or in obedience to a court order. If the commissioner of finance and taxation or any employee, or any person to whom such information is divulged, should divulge the contents of any report except in accordance with the foregoing exceptions, he shall be guilty of a misdemeanor and punished accordingly.

67-2922. Payment of tax—Examination of reports—Adjustment of payments.—The tax herein levied shall be paid to the department of revenue at the time the sworn report is filed. The commissioner of revenue shall examine every sworn report as promptly as possible and shall ascertain whether the tax payment which accompanies such report is the amount actually and lawfully owing by the taxpayer. If the payment tendered is insufficient, the commissioner of revenue shall determine the correct tax due and shall immediately notify the taxpayer of the balance due, together with any interest and penalty thereon. If the amount tendered is in excess of the correct liability under this chapter, the commissioner, with the approval of the attorney-general, shall return the amount of such excess to the taxpayer by state warrant, as in the case of other refunds.

67-2923. Access to records—Subpoena.—The commissioner of finance and taxation or his duly authorized agent shall have access to all books and records of corporations required to pay tax hereunder, to enable the commissioner to ascertain the correctness of any fact or report made or herein required. In the event any corporation

fails or refuses to permit the commissioner or his agent to have access to necessary books and information, then the commissioner shall have power and authority to compel the attendance of witnesses and the production of books and papers in the same manner as process may now be issued by the courts to compel the attendance of witnesses and the production of books and papers. Such process shall run anywhere in the state and shall be served by the sheriff or any lawful officer to whom it may be directed. Disobedience to such process shall be treated as contempt of court and may be punished as such on the petition of the commissioner to the chancery court of the county to which such process is directed.

67-2924. Penalty and interest—Extension of time.—Any corporation delinquent in the filing of the report herein required or in the payment of the tax herein levied shall pay a penalty of ten per cent (10%) for the first month or fractional part thereof of delinquency, and penalty thereafter at the rate of one half of one per cent (½%) of the amount due for each month of such delinquency.

Provided, that the commissioner of revenue shall have authority in the exercise of his discretion, for good cause shown, to grant an extension of time to the taxpayer to file report and pay the tax herein imposed, without penalty attaching, but the tax shall bear interest as herein provided from due date until paid. The penalties as herein provided shall be paid by the taxpayer unless the tax and interest thereon shall be paid on or before the expiration date of the extension.

67-2925. Revocation of charter for nonpayment of tax.—The commissioner of revenue shall certify to the secretary of state the name of any corporation which fails or refuses to file the report and to pay the tax herein re-

quired in all cases where such report and tax payment have not been made within ninety (90) days after due date. At the time of such certification to the secretary of state, the commissioner of revenue shall give notice to the corporation of the action taken. Thereupon the charter of such corporation or its domestication in Tennessee shall stand as automatically revoked and the secretary of state shall note such revocation upon his records. At any time after date of revocation such charter may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state, provided, however, the title has not been taken by another corporation, and further provided that proof be furnished sufficient to the commissioner that no third party will be injured by such reinstatement.

67-2926. Injunction from doing business.—Any corporation subject to the tax herein levied which shall be delinquent in filing this report or in paying this tax may be enjoined from doing business in this state in a suit brought in the name of the state by the attorney-general.

67-2927. Assessment of tax without report.—In addition to the penalty and interest heretofore provided, the commissioner is authorized, in the case of any corporation failing or refusing to make report and to pay tax, to ascertain the tax liability of such corporation from any information available and to give notice of the amount of such tax liability to the corporation forthwith by registered mail. After being so notified, any corporation shall pay the tax assessed against it and if it contests the legality thereof must proceed in accordance with Section 67-2931.

67-2928. Lien against property.—The tax herein levied shall be a lien upon all the property of such taxpayer against whom the same is assessed located in this

state and shall be inferior only to state and county ad valorem taxes and to existing liens created by contracts, but it shall be superior to any renewals of existing contract liens.

67-2929. Distress warrant.—The commissioner of revenue is empowered, and it shall be his duty, to issue a distress warrant for the collection of the franchise tax, interest and penalty due from any corporation delinquent for sixty (60) days. Said distress warrant may be addressed and delivered to the sheriff of the county wherein such delinquent corporation has its principal office or place of business in Tennessee, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent corporation may be found.

The sheriff into whose hands such warrant may come, or his deputy, may execute same by distraint and sale of personal property belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation and the proceedings in respect thereto shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions and necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

If the officer cannot find personal property to satisfy said distress warrant, he may levy same upon any real estate in his county belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation, and if levied on land, said distress warrant, together with the officer's return thereon, shall be returned to the circuit court of the county wherein the land lies, and the land shall be condemned and sold under the orders of

said circuit court in the same manner as in case of the levy on land of an execution issued by a justice of the peace.

67-2930. Suit for collection of tax.—The commissioner may at his option bring suit in any court of competent jurisdiction against a delinquent taxpayer for the collection of the tax, interest and penalties herein provided.

67-2931. Action to recover tax paid under protest—Injunction of collection prohibited.—Whenever any corporation conceives that any tax demanded by the commissioner of finance and taxation under the supposed authority of this chapter is illegal or not due it shall be the duty of the corporation to pay the tax and to challenge the legality or correctness thereof in a suit instituted in accordance with Sections 67-2303—67-2312. In such suit for the recovery of a tax paid all questions of law and fact with reference to the illegality of the tax may be raised. No corporation shall be entitled to enjoin the commissioner of finance and taxation from collecting any tax demanded by such collecting officer under the authority of this chapter and no such injunction shall issue under the guise of enjoining an assessment or a collection. The sole remedy of the taxpayer shall be a suit to recover the tax alleged to have been illegally collected or demanded. In such suit the commissioner shall not be permitted to defend upon the ground that the payment was not made under duress. In any case where a court of competent jurisdiction shall decree a recovery of a tax herein such court shall be authorized to allow interest from the date of the payment to the date of the judgment at a rate not exceeding six per cent (6%) per annum.

The provisions of this section with reference to payment under protest and with reference to no injunctive

relief shall apply to taxes demanded by the commissioner where the original payment of the corporation was alleged to be insufficient as well as to taxes assessed by the commissioner in the absence of the sworn report or statement required.

The time for filing suits for the recovery of allegedly illegal taxes and the procedure in such suits shall be governed by Sections 67-2303—67-2312.

APPENDIX B.

PROVISIONS OF TENNESSEE CODE ANNOTATED IMPOSING CORPORATE FRANCHISE TAX FOR TAXABLE YEARS 1965 AND 1966.

67-2901. Short title.—This chapter may be cited and referred to as "The Franchise Tax Law."

67-2902. Corporations subject to tax.—All corporations organized under the laws of this state, other than those organized for general welfare and not for profit, and all corporations organized under the laws of any other state or country for profit and doing business in Tennessee, shall, without exception other than as provided in Section 67-2911, pay to the commissioner of revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax hereby imposed shall be paid for the privilege of engaging in business in corporate form in this state and shall be in addition to all other taxes levied by any other statute.

Every such taxable entity organized and existing under and by virtue of the laws of this or any other state, territory or country, or organized and existing without any specific statutory authority, now or hereafter doing busi-

ness within this state, without domesticating or qualifying to do business in this state, or while its charter is forfeited, revoked or suspended, shall as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this chapter.

Any corporation organized under the laws of the state of Tennessee whose sole expressed corporate purpose is for the furthering of industrial development in communities throughout the state, and doing related matters thereto, and whose stockholders receive no income other than interest or dividends on money invested in said corporation for constructing industrial buildings and whose officers receive no compensation shall be exempt from the payment of franchise and excise taxes.

The tax hereinbefore levied shall also be paid by all business trusts, commonly known as Massachusetts Trusts, for the privilege of doing business in Tennessee and the word "corporation" when used herein shall be deemed to include a business trust unless the particular context requires a different meaning.

67-2903. Corporations in receivership or trusteeship. —The tax imposed by this chapter shall apply to corporations whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction and shall continue to accrue until such time as the corporation has been actually and legally dissolved or withdrawn from this state.

67-2904. Rate of tax.—The privilege tax hereby imposed shall be a tax of fifteen cents (15¢) on the one hundred dollars ($100), or major fraction thereof, of the issued and outstanding stock, surplus and undivided profits of each such corporation as shown by the books and

records of such corporation at the close of its last fiscal year preceding the making of the sworn report hereinafter required.

67-2905. State purposes only.—The tax herein levied shall be a tax for state purposes only and no county or municipality shall have the power to levy a similar tax.

67-2906. Tax reduced for impairment of capital.—Where a corporation doing business without surplus or undivided profits has had the value of its capital stock impaired by operating deficits or other business losses, such as fire, flood, tornado, etc., and where such deficit or loss is carried upon the books and records of the corporation as an impairment of capital, the measure of the tax shall be diminished by such loss or deficit.

67-2907. Reduction of tax for stock held by another taxpaying corporation.—The value of the stock held by any corporation in any other corporation paying the tax herein levied and actually doing business in this state shall be deducted from the measure of the tax of the first corporation.

67-2908. Inclusion of debt owed to or guaranteed by affiliate.—If the capital stock of a corporation which is a subsidiary of another corporation or closely affiliated therewith by stock ownership is inadequate for its business needs apart from credit extended or indebtedness guaranteed by the parent or an affiliated corporation, in determining the amount of capital, surplus and undivided profits of such corporation with respect to its liability for the tax imposed by this chapter, there shall be included in the measure of the tax the indebtedness owed to or guaranteed by the parent or an affiliated corporation. If necessary to apportion such indebtedness the methods of allocation hereinafter set forth shall be used.

67-2909. Value of tangible property as minimum tax base.—The measure of the tax hereby imposed shall in no case be less than the actual value of property owned, or property used, in Tennessee. In cases where part or all of the property is rented the actual value of property will be deemed to be the book value of all property owned as shown by the books and records of such corporation at the close of its last fiscal year preceding the making of the sworn report hereinafter required (excepting books with respect to investment costs kept pursuant to regulations of the interstate commerce commission) plus the value of the rental property used which shall be determined by multiplying the net annual rental by the following multiples:

		Multiples
(a)	Real property	5
(b)	Machinery and equipment used in manufacturing and processing	3
(c)	Furniture, office machinery and equipment	2
(d)	Delivery or mobile equipment	1

The "net annual rental" shall mean the gross annual rental paid by the taxpayer less the gross rental received by the taxpayer for sub-rental. For the purposes of this section the term "used" shall mean only such property as is actually utilized by the corporation in the conduct of its principal business.

67-2910. Minimum tax.—The minimum tax payable under this chapter shall be ten dollars ($10.00).

67-2911. Credit for insurance premiums tax.—There shall be credited upon the tax hereby imposed such net amounts as are paid by insurance companies to this state

as a tax upon gross premiums collected by them, not including the gross premium receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law. There shall be no other credits.

67-2912. Apportionment of capital of corporations doing business outside state.—In the case of corporations doing business in Tennessee and elsewhere the measure of the tax as herein above set forth shall be apportioned to Tennessee for the purpose of taxation in the manner set forth in Sections 67-2913—67-2918.

67-2913. Apportionment of manufacturers' and processors' capital.—If the principal business in this state is manufacturing or if it is any form of collecting, assembling or processing of goods or materials, or if it is constructing or improving real property for others, the capital stock, surplus and undivided profits shall be apportioned to Tennessee on the basis of the ratio obtained by taking the arithmetical average of the following two (2) ratios:

(a) The ratio of the value of its real estate and tangible personal property in this state on the date of the close of the fiscal year, to the value of its entire real estate and tangible personal property, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of manufacturing, collecting, assembling or processing within this state, to the total cost of manufacturing, collecting, assembling or processing within and without the state.

67-2914. Apportionment of dealers' capital.—If the principal business in this state is selling, distributing, dealing in or using tangible personal property, the capital stock, surplus and undivided profits shall be apportioned to Tennessee on the basis of the ratio obtained by taking the arithmetical average of the following two (2) ratios:

(a) The ratio of the value of its real estate and tangible personal property in this state on the day of the close of its fiscal year, to the value of its entire real estate and tangible personal property then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, public or private warehouses, or branches located in Tennessee during the ~~income~~ year to the total sales made everywhere during said year.

67-2915. Apportionment of common carriers' capital.—If the principal business in this state is that of a common carrier of persons or property for hire, then on the basis of the appropriate ratio as follows:

(a) RAILROADS.—The ratio obtained by taking the arithmetical average of the following two (2) ratios:

1. The gross receipts from railway operations on business beginning and ending within this state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state.

2. The mileage owned and operated within Tennessee plus mileage leased and operated within Tennessee as compared with the total of such mileage within and without this state.

(b) MOTOR CARRIERS.—The ratio obtained by taking the arithmetical average of the following two (2) ratios:

1. The gross receipts from operations on business beginning and ending within this state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state.

2. The ratio of the total franchise miles to which it holds or uses under lease, contract or otherwise, certificates of convenience and necessity from the interstate commerce commission of the United States or the railroad and public utilities commission of Tennessee within the state, to the total franchise miles which it holds or uses under such certificates from said commissions, and like commissions or agencies of other states, within and without the state, all as shown by the annual reports made by said corporation to the various commissions from which it holds certificates.

(c) RAIL AND MOTOR CARRIERS.—Where the corporation is engaged in transporting passengers and property by both rail and motor, then the ratio of the sum of the miles within the state as computed under paragraphs (a) and (b) above, to the sum of the miles under said paragraphs within and without the state.

(d) PIPELINES.—The ratio obtained by taking the arithmetical average of the following two (2) ratios:

1. The gross receipts from operations on business beginning and ending within this state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state.

2. The ratio of the pipeline miles owned or operated or owned and operated within the state, to the miles of pipelines owned or operated or owned and operated within and without the state.

67-2916. Apportionment of capital on basis of gross receipts.—If the principal business is other than the manufacture or sale of tangible property or that of a common carrier of persons or property for hire, such proportion as its gross receipts in Tennessee during the income year

is to its gross receipts for such year within and without the state.

67-2917. Variation from standard apportionment formulas.—If the apportionment provisions of this law do not fairly represent the extent of the taxpayer's business activity in this state, because of peculiar or unusual circumstances inherent in a particular case and create a hardship or injustice, the commissioner, upon application of the taxpayer and upon such showing, is authorized with the approval of the attorney-general, to adopt such other method of apportionment as would be fair and just under the facts of the case.

Provided, however, that when such other method of apportionment has once been established, it shall continue in effect so long as the peculiar or unusual circumstances remain substantially unchanged. In the event of federal legislation that would proscribe present Tennessee statutory formulas the commissioner of revenue, with the approval of the attorney-general, may adopt such alternate formulas as would be consistent with the federal legislation.

67-2918. Apportioned capital as basis for tax.—When corporations are doing business in Tennessee and elsewhere, only that part of the capital, surplus and undivided profits properly allocable to Tennessee by the manner of apportionment set forth in Sections 67-2913—67-2917, shall be used as a measure of the tax subject to the other provisions of this chapter with reference to a minimum measure and minimum tax.

67-2919. Administration—Rules and regulations.—The administration of this chapter and the collection of the tax herein levied are vested in the commissioner of finance and taxation who shall have the power to employ such per-

sons as may be necessary in the administration of this chapter. There is apportioned annually an amount equal to two per cent (2%) of the receipts derived from the proceeds of the tax for the purpose of administering this chapter.

The commissioner of finance and taxation is granted full power and authority to adopt such reasonable rules and regulations, not in conflict with this or other statutes, as he may deem necessary to enforce the collection of the tax herein levied. Such rules and regulations, before being effective, shall be approved by the attorney-general and shall be printed. A copy of such rules and regulations shall be furnished any interested party upon application and shall accompany the annual report form required to be filed under this chapter.

67-2920. Annual report—Contents.—Every corporation liable for the tax here imposed shall file with the commissioner of revenue on such form as he may prescribe an accurate and complete report, signed by its president or other principal officer under penalty of perjury, which report shall contain the following data:

(a) The name of the corporation, the state in which chartered, the location of its principal place of business in this state and the location of its principal or home office.

(b) The amount of capital stock subscribed and paid in, the amount issued and outstanding, the amount of surplus and undivided profits, together with the book value of each share of such stock as shown by the books and records of the corporation at the close of its last fiscal year.

(c) A comparative balance sheet as of the beginning and close of the last fiscal year as shown by the books and records of the corporation.

(d) Such other and further information as may be required by the commissioner for the reasonable enforcement of this chapter.

By the enumeration of the specific data required above it is not intended to divest the commissioner of his right to require all information which he may deem necessary for the enforcement of this chapter.

All reports must be filed with the commissioner of revenue on or before the first day of the fourth month following the close of taxpayer's fiscal year. The tax must be paid to the department of revenue at the time of filing the report.

67-2921. Reports confidential.—Reports of corporations made hereunder shall be confidential and shall not be divulged by the commissioner or his assistants except to a legislative committee appointed for the purpose of examining them, to the governor, to the attorney-general, or in obedience to a court order. If the commissioner of finance and taxation or any employee, or any person to whom such information is divulged, should divulge the contents of any report except in accordance with the foregoing exceptions, he shall be guilty of a misdemeanor and punished accordingly.

67-2922. Payment of tax—Examination of reports—Adjustment of payments.—The tax herein levied shall be paid to the department of revenue at the time the sworn report is filed. The commissioner of revenue shall examine every sworn report as promptly as possible and shall ascertain whether the tax payment which accompanies such report is the amount actually and lawfully owing by the taxpayer. If the payment tendered is insufficient, the commissioner of revenue shall determine the correct tax due and shall immediately notify the tax-

payer of the balance due, together with any interest and penalty thereon. If the amount tendered is in excess of the correct liability under this chapter, the commissioner, with the approval of the attorney-general, shall return the amount of such excess to the taxpayer by state warrant, as in the case of other refunds.

67-2923. Access to records—Subpoena.—The Commissioner of finance and taxation or his duly authorized agent shall have access to all books and records of corporations required to pay tax hereunder, to enable the commissioner to ascertain the correctness of any fact or report made or herein required. In the event any corporation fails or refuses to permit the commissioner or his agent to have access to necessary books and information, then the commissioner shall have power and authority to compel the attendance of witnesses and the production of books and papers in the same manner as process may now be issued by the courts to compel the attendance of witnesses and the production of books and papers. Such process shall run anywhere in the state and shall be served by the sheriff or any lawful officer to whom it may be directed. Disobedience to such process shall be treated as contempt of court and may be punished as such on the petition of the commissioner to the chancery court of the county to which such process is directed.

67-2924. Penalty and interest—Extension of time. —Any corporation delinquent in filing the report herein required or in payment of the tax herein levied shall pay a penalty of five per cent (5%) for the first month or fractional part thereof of delinquency, provided, however, that should the period of delinquency exceed one (1) month the rate of penalty will be an additional five per cent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one-half of

one per cent (½ of 1%) per month of the amount of tax due. All delinquency shall bear interest at the rate of six per cent (6%) per annum from due date until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by due date and no such penalty or interest can be waived.

Provided, that the commissioner of revenue shall have authority in the exercise of his discretion, for good cause shown, to grant an extension of time to the taxpayer to file report and pay the tax herein imposed, without penalty attaching, but the tax shall bear interest as herein provided from due date until paid. The penalties as herein provided shall be paid by the taxpayer unless the tax and interest thereon shall be paid on or before the expiration date of the extension.

67-2925. Revocation of charter for nonpayment of tax.—The commissioner of revenue shall certify to the secretary of state the name of any corporation which fails or refuses to file the report and to pay the tax herein required in all cases where such report and tax payment have not been made within ninety (90) days after due date. At the time of such certification to the secretary of state, the commissioner of revenue shall give notice to the corporation of the action taken. Thereupon the charter of such corporation or its domestication in Tennessee shall stand as automatically revoked and the secretary of state shall note such revocation upon his records. At any time after date of revocation such charter may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state, provided, however, the title has not been taken by another corporation, and further provided that proof be furnished sufficient to the commissioner that no third party will be injured by such reinstatement.

67-2926. Injunction from doing business.—Any corporation subject to the tax herein levied which shall be delinquent in filing this report or in paying this tax may be enjoined from doing business in this state in a suit brought in the name of the state by the attorney-general.

67-2927. Assessment of tax without report.—In addition to the penalty and interest heretofore provided, the commissioner is authorized, in the case of any corporation failing or refusing to make report and to pay tax, to ascertain the tax liability of such corporation from any information available and to give notice of the amount of such tax liability to the corporation forthwith by registered mail. After being so notified, any corporation shall pay the tax assessed against it and if it contests the legality thereof must proceed in accordance with Section 67-2941.

67-2928. Lien against property.—The tax herein levied shall be a lien upon all the property of such taxpayer against whom the same is assessed located in this state and shall be inferior only to state and county ad valorem taxes and to existing liens created by contracts, but it shall be superior to any renewals of existing contract liens.

67-2929. Distress warrant.—The commissioner of revenue is empowered, and it shall be his duty, to issue a distress warrant for the collection of the franchise tax, interest and penalty due from any corporation delinquent for sixty (60) days. Said distress warrant may be addressed and delivered to the sheriff of the county wherein such delinquent corporation has its principal office or place of business in Tennessee, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent corporation may be found.

The sheriff into whose hands such warrant may come, or his deputy, may execute same by distraint and sale of

personal property belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation and the proceedings in respect thereto shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions and necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

If the officer cannot find personal property to satisfy said distress warrant, he may levy same upon any real estate in his county belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation, and if levied on land, said distress warrant, together with the officer's return thereon, shall be returned to the circuit court of the county wherein the land lies, and the land shall be condemned and sold under the orders of said circuit court in the same manner as in case of the levy on land of an execution issued by a justice of the peace.

67-2930. Suit for collection of tax.—The commissioner may at his option bring suit in any court of competent jurisdiction against a delinquent taxpayer for the collection of the tax, interest and penalties herein provided.

67-2931. Action to recover tax paid under protest—Injunction of collection prohibited.—Whenever any corporation conceives that any tax demanded by the commissioner of finance and taxation under the supposed authority of this chapter is illegal or not due it shall be the duty of the corporation to pay the tax and to challenge the legality or correctness thereof in a suit instituted in accordance with Sections 67-2303—67-2312. In such suit for the re-

covery of a tax paid all questions of law and fact with reference to the illegality of the tax may be raised. No corporation shall be entitled to enjoin the commissioner of finance and taxation from collecting any tax demanded by such collecting officer under the authority of this chapter and no such injunction shall issue under the guise of enjoining an assessment or a collection. The sole remedy of the taxpayer shall be a suit to recover the tax alleged to have been illegally collected or demanded. In such suit the commissioner shall not be permitted to defend upon the ground that the payment was not made under duress. In any case where a court of competent jurisdiction shall decree a recovery of a tax herein such court shall be authorized to allow interest from the date of the payment to the date of the judgment at a rate not exceeding six per cent (6%) per annum.

The provisions of this section with reference to payment under protest and with reference to no injunctive relief shall apply to taxes demanded by the commissioner where the original payment of the corporation was alleged to be insufficient as well as to taxes assessed by the commissioner in the absence of the sworn report or statement required.

The time for filing suits for the recovery of allegedly illegal taxes and the procedure in such suits shall be governed by Sections 67-2303—67-2312.

APPENDIX C.

PROVISIONS OF TENNESSEE CODE ANNOTATED IMPOSING EXCISE TAX FOR TAXABLE YEARS 1963 AND 1964.

67-2701. Corporations subject to tax—Rate.—All corporations, cooperatives conducted for profit, joint-stock associations and business trusts, organized under the laws of this state, other than those organized for general welfare and not for profit, and all such entities organized under the laws of any other state or country for profit and doing business in Tennessee, shall, without exception, pay to the commissioner of revenue annually an excise tax, in addition to all other taxes, equal to four per cent (4%) of the net earnings for their next preceding fiscal year, from business done within the state; provided, however, net earnings shall not include dividends received from any other corporation paying excise tax under the provisions of this chapter, where such other corporation is a wholly owned subsidiary of the taxpayer; provided further, that all entities enumerated hereinabove and taxable under this section may carry their current year's losses forward two (2) years in computing net income subject to said tax.

Every such taxable entity organized and existing under and by virtue of the laws of this or any other state, territory or country, or organized and existing without any specific statutory authority, now or hereafter doing business within this state, without domesticating or qualifying to do business in this state, or while its charter is forfeited, revoked or suspended, shall as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this chapter.

Any corporation organized under the laws of the state of Tennessee whose sole expressed corporate purpose is

for the furthering of industrial development in communities throughout the state, and doing related matters thereto, and whose stockholders receive no income other than interest or dividends on money invested in said corporation for constructing industrial buildings and whose officers receive no compensation shall be exempt from the payment of franchise and excise taxes.

67-2702. State purposes only.—The tax herein imposed is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax.

67-2703. Additional to other taxes—Exceptions.—The tax here imposed shall be in addition to all other taxes, and no other tax shall be a credit upon the tax hereby imposed except as provided by Section 56-421, and except that all sums paid by state banks into the state treasury as fees for the use and benefit of the state banking department shall be a credit upon the tax hereby levied.

67-2704. Corporations owning lodge meeting places.—Corporations organized for the purpose of erecting, owning or operating a common meeting place for more than one (1) Masonic Lodge, more than one (1) lodge of Odd Fellows, or similar lodges, and which corporations could obtain general welfare charters, and in which corporations all the stock is owned by lodges participating in the common temple or meeting place, shall not be liable for the tax imposed by Section 67-2701, regardless of the type of charter held by said operating corporations, except on income received by said corporation as rentals for use for commercial purposes.

67-2705. Deduction for federal or foreign tax not permitted.—In computing the net earnings subject to excise taxation under this chapter there shall be no deduc-

tion for any taxes on, or according to, or measured by income, profits, earnings, or excess profits imposed by authority of the government of the United States of America, or by authority of any foreign government.

67-2706. Apportionment for corporations doing business outside state.—In the case of corporations, cooperatives, joint-stock associations and business trusts doing business in Tennessee and elsewhere the net earnings shall be apportioned as hereinafter set forth and the net earnings thus apportioned to Tennessee shall be deemed to be the earnings arising from business done within the state and shall be the measure of this tax. Such method of apportionment shall be as set forth in Sections 67-2707—67-2712.

67-2710. Apportionment on basis of gross receipts or net earnings.—If the principal business is other than the manufacture or sale of tangible property, or that of a common carrier of persons or property for hire, such proportion as its gross receipts in Tennessee during the income year is to its gross receipts for such year within and without the state.

In the event all or part of a corporation's business in this state is constructing, or improving real property for others, the measure of the tax shall be a combination of the earnings arising from a separate accounting basis maintained on construction operations plus the apportioned earnings from all other operations as derived by the provisions of Section 67-2706.

67-2711. Variation from standard apportionment formulas.—If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this state, because of peculiar or unusual circumstances inherent in a particular case and

create a hardship or injustice, the commissioner, upon application of the taxpayer and upon such showing, is authorized with the approval of the attorney-general, to adopt such other method of allocation and apportionment as would be fair and just under the facts of the case.

Provided, however, that when such other method of apportionment has once been established it shall continue in effect so long as peculiar or unusual circumstances remain substantially unchanged.

In the event of federal legislation that would proscribe present Tennessee statutory formulas the commissioner of revenue, with the approval of the attorney-general, may adopt such alternate formulas as would be consistent with the federal legislation.

67-2712. Apportionment of insurance companies' earnings.—Tennessee insurance companies shall pay on net earnings proportioned to premiums on policies on persons and property in this state.

67-2713. Administration by department of finance and taxation.—The supervision and collection of the tax imposed shall be under the direction of the department of finance and taxation, and such department shall have authority and power to prescribe forms upon which corporations and joint-stock associations, liable for the tax imposed, shall make reports of such facts and information as will enable the commissioner of said department to ascertain the correctness of the amount reported and paid by such corporations or joint-stock associations.

67-2714. Access to books and records. Said commissioner shall have access to all books and records of all such corporations and joint-stock associations to enable him to ascertain the correctness of any fact or report made or herein required.

67-2715. Finality of commissioner's decisions.—In all matters requiring the exercise of judgment and discretion as to what may or may not be net earnings, the judgment and opinion of said commissioner shall be final and conclusive and there shall be no review of his action except that the taxpayer shall have the right to pay any such tax under protest and to sue for the recovery thereof or the recovery of a part thereof under Sections 67-2303—67-2312.

67-2716. Date payment due—Penalty—Extension of time.—All reports must be filed with the commissioner of revenue on or before the first day of the fourth month following the close of taxpayer's fiscal year. The tax must be paid to the department of revenue at the time of filing the report.

Any corporation delinquent in the filing of the report herein required or in payment of the tax herein levied shall pay a penalty of ten per cent (10%) for the first month or fractional part thereof of delinquency, and penalty thereafter at the rate of one-half of one per cent (½%) of the amount due for each month of such delinquency.

Provided, that the commissioner of revenue shall have authority in the exercise of his discretion, for good cause shown, to grant an extension of time to the taxpayer to file report and pay the tax herein imposed, without penalty attaching, but the tax shall bear interest as herein provided from due date until paid. The penalties as herein provided shall be paid by the taxpayer unless the tax and interest thereon shall be paid on or before the expiration date of the extension.

67-2717. Suits for collection of tax.—Said commissioner may, in the name of the state of Tennessee, institute

suit or suits for the collection of said tax or any part thereof and for the penalty and interest imposed.

67-2718. Issuance of distress warrant.—The commissioner of revenue is empowered, and it shall be his duty, to issue a distress warrant for the collection of the excise tax, interest and penalty due from any corporation delinquent for sixty (60) days. Said distress warrant may be addressed and delivered to the sheriff of the county wherein such delinquent corporation has its principal office or place of business in Tennessee, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent corporation may be found.

The commissioner of revenue is empowered and it shall be his duty to issue a distress warrant against any officer or stockholder of a corporation which has dissolved or has been liquidated and has refused or failed to pay excise taxes due the state, said warrant to be in an amount equal to unpaid excise tax, penalty and interest owed by such corporation.

67-2719. Execution of warrant on personal property.—The sheriff into whose hands such warrant may come, or his deputy, may execute same by distraint and sale of personal property belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation, and the proceedings in respect thereto shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions, and necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

67-2720. Levy of warrant on realty.—If the officer cannot find personal property to satisfy said distress war-

rant, he may levy same upon any real estate in his county belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation; and if levied on land, said distress warrant, together with the officer's return thereon, shall be returned to the circuit court of the county wherein the land lies, and the land shall be condemned and sold under the orders of said circuit court in the same manner as in case of the levy on land of an execution issued by a justice of the peace.

67-2721. Rules and regulations.—The commissioner of finance and taxation is authorized to make and promulgate rules and regulations, not inconsistent with this chapter, for the purpose of carrying out the provisions of this chapter, which rules and regulations, when approved by the attorney-general, and when promulgated and published, shall have the force and effect of law.

67-2722. Expenses of administration.—Said commissioner may expend so much of two and one-half per cent (2½%) of the amount received hereunder each year as may be necessary to defray the expenses and cost of litigation arising in the administration of this chapter.

67-2723. Penalties for failure to make reports or pay tax.—The willful failure or refusal of any corporation or joint-stock association to pay the tax or make reports as hereinabove required shall be a misdemeanor and subject it to a fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000).

67-2724. Use of information from returns.—Except in accordance with proper judicial order or as otherwise required by law, it shall be unlawful for the commissioner of finance and taxation, and deputy, agent, clerk, or other officer or employee to make known in any manner

the amount of income or any particulars set forth in any report or return required under this chapter; provided, nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof; or the use of such reports or returns by legal representatives of the state in any suit or suits for the collection of said tax or any part thereof, or for the penalty and interest imposed by this chapter. A violation of any of the provisions of this section shall be a misdemeanor punishable by fine of not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding one (1) year, or both, at the discretion of the court; provided, however, the commissioner of finance and taxation may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax similar to that imposed by this chapter, or the authorized representative of either such officer, to inspect the tax return of any corporation, or may furnish to such officer or to his authorized representative an abstract of the return of any corporation or supply him with information concerning any item contained in any return or disclosed by the report of any investigation of any return; but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes or regulations of the United States or of such other state, as the case may be, grant substantially similar privileges to the governor or the proper officers of this state charged with the administration of this chapter.

APPENDIX D.

PROVISIONS OF TENNESSEE CODE ANNOTATED IMPOSING EXCISE TAX FOR TAXABLE YEARS 1965 AND 1966.

67-2701. Corporations subject to tax—Rate.—All corporations, cooperatives conducted for profit, joint-stock associations and business trusts, organized under the laws of this state, other than those organized for general welfare and not for profit, and all such entities organized under the laws of any other state or country for profit and doing business in Tennessee, shall, without exception, pay to the commissioner of revenue annually an excise tax, in addition to all other taxes, equal to four per cent (4%) of the net earnings for their next preceding fiscal year, from business done within the state; provided, however, net earnings shall not include dividends received from any other corporation paying excise tax under the provisions of this chapter, where such other corporation is a wholly owned subsidiary of the taxpayer; provided further, that all entities enumerated hereinabove and taxable under this section may carry their current year's losses forward two (2) years in computing net income subject to said tax.

Every such taxable entity organized and existing under and by virtue of the laws of this or any other state, territory or country, or organized and existing without any specific statutory authority, now or hereafter doing business within this state, without domesticating or qualifying to do business in this state, or while its charter is forfeited, revoked or suspended, shall as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this chapter.

Any corporation organized under the laws of the state of Tennessee whose sole expressed corporate purpose is

for the furthering of industrial development in communities throughout the state, and doing related matters thereto, and whose stockholders receive no income other than interest or dividends on money invested in said corporation for constructing industrial buildings and whose officers receive no compensation shall be exempt from the payment of franchise and excise taxes.

67-2702. State purposes only. The tax hereby imposed is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax.

67-2703. Additional to other taxes. Exceptions. The tax here imposed shall be in addition to all other taxes, and no other tax shall be a credit upon the tax hereby imposed except as provided by Section 56-421, and except that all sums paid by state banks into the state treasury as fees for the use and benefit of the state banking department shall be a credit upon the tax hereby levied.

67-2704. Corporations owning lodge meeting places. —Corporations organized for the purpose of erecting, owning or operating a common meeting place for more than (1) Masonic Lodge, more than (1) lodge of Odd Fellows, or similar lodges, and which corporations could obtain general welfare charters, and in which corporations all the stock is owned by lodges participating in the common temple or meeting place, shall not be liable for the tax imposed by Section 67-2701, regardless of the type of charter held by said operating corporations, except on income received by said corporation as rentals for use for commercial purposes.

67-2705. Deduction for federal or foreign tax not permitted.—In computing the net earnings subject to excise taxation under this chapter there shall be no deduction

for any taxes on, or according to, or measured by income, profits, earnings, or excess profits imposed by authority of the government of the United States of America, or by authority of any foreign government.

67-2706. Apportionment for corporations doing business outside state.—In the case of corporations, cooperatives, joint-stock associations and business trusts doing business in Tennessee and elsewhere the net earnings shall be apportioned as hereinafter set forth and the net earnings thus apportioned to Tennessee shall be deemed to be the earnings arising from business done within the state and shall be the measure of this tax. Such method of apportionment shall be as set forth in Sections 67-2707—67-2712.

67-2710. Apportionment on basis of gross receipts or net earnings.—If the principal business is other than the manufacture or sale of tangible property, or that of a common carrier of persons or property for hire, such proportion as its gross receipts in Tennessee during the income year is to its gross receipts for such year within and without the state.

In the event all or part of a corporation's business in this state is constructing, or improving real property for others, the measure of the tax shall be a combination of the earnings arising from a separate accounting basis maintained on construction operations plus the apportioned earnings from all other operations as derived by the provisions of Section 67-2706.

67-2711. Variation from standard apportionment formulas.—If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this state, because of peculiar or unusual circumstances inherent in a particular case and

create a hardship or injustice, the commissioner, upon application of the taxpayer and upon such showing, is authorized with the approval of the attorney-general, to adopt such other method of allocation and apportionment as would be fair and just under the facts of the case.

Provided, however, that when such other method of apportionment has once been established it shall continue in effect so long as peculiar or unusual circumstances remain substantially unchanged.

In the event of federal legislation that would proscribe present Tennessee statutory formulas the commissioner of revenue, with the approval of the attorney-general, may adopt such alternate formulas as would be consistent with the federal legislation.

67-2712. Apportionment of insurance companies' earnings.—Tennessee insurance companies shall pay on net earnings proportioned to premiums on policies on persons and property in this state.

67-2713. Administration by department of finance and taxation.—The supervision and collection of the tax imposed shall be under the direction of the department of finance and taxation, and such department shall have authority and power to prescribe forms upon which corporations and joint-stock associations, liable for the tax imposed, shall make reports of such facts and information as will enable the commissioner of said department to ascertain the correctness of the amount reported and paid by such corporations or joint-stock associations.

67-2714. Access to books and records. Said commissioner shall have access to all books and records of all such corporations and joint-stock associations to enable him to ascertain the correctness of any fact or report made or herein required.

67-2715. Finality of commissioner's decisions.—In all matters requiring the exercise of judgment and discretion as to what may or may not be net earnings, the judgment and opinion of said commissioner shall be final and conclusive and there shall be no review of his action except that the taxpayer shall have the right to pay any such tax under protest and to sue for the recovery thereof or the recovery of a part thereof under Sections 67-2303—67-2312.

67-2716. Date payment due—Penalty—Extension of time.—All reports must be filed with the commissioner of revenue on or before the first day of the fourth month following the close of taxpayer's fiscal year. The tax must be paid to the department of revenue at the time of filing the report.

Any corporation delinquent in filing the report herein required or in payment of the tax herein levied shall pay a penalty of five per cent (5%) for the first month or fractional part thereof of delinquency, provided, however, that should the period of the delinquency exceed one (1) month the rate of penalty will be an additional five per cent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one-half of one per cent (½ of 1%) per month of the amount of tax due. All delinquency shall bear interest at the rate of six per cent (6%) per annum from due date until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by due date and no such penalty or interest can be waived.

Provided, that the commissioner of revenue shall have authority in the exercise of his discretion, for good cause shown, to grant an extension of time to the taxpayer to file report and pay the tax herein imposed, without penalty attaching, but the tax shall bear interest as

herein provided from due date until paid. The penalties as herein provided shall be paid by the taxpayer unless the tax and interest thereon shall be paid on or before the expiration date of the extension.

67-2717. Suits for collection of tax.—Said commissioner may, in the name of the state of Tennessee, institute suit or suits for the collection of said tax or any part thereof and for the penalty and interest imposed.

67-2718. Issuance of distress warrant.—The commissioner of revenue is empowered, and it shall be his duty, to issue a distress warrant for the collection of the excise tax, interest and penalty due from any corporation delinquent for sixty (60) days. Said distress warrant may be addressed and delivered to the sheriff of the county wherein such delinquent corporation has its principal office or place of business in Tennessee, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent corporation may be found.

The commissioner of revenue is empowered and it shall be his duty to issue a distress warrant against any officer or stockholder of a corporation which has dissolved or has been liquidated and has refused or failed to pay excise taxes due the state, said warrant to be in an amount equal to unpaid excise tax, penalty and interest owed by such corporation.

67-2719. Execution of warrant on personal property.—The sheriff into whose hands such warrant may come, or his deputy, may execute same by distraint and sale of personal property belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation, and the proceedings in respect

thereto shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions, and necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

67-2720. Levy of warrant on realty.—If the officer cannot find personal property to satisfy said distress warrant, he may levy same upon any real estate in his county belonging to such delinquent corporation, or which any officer or stockholder of the corporation may have acquired from said dissolved or liquidated corporation; and if levied on land, said distress warrant, together with the officer's return thereon, shall be returned to the circuit court of the county wherein the land lies, and the land shall be condemned and sold under the orders of said circuit court in the same manner as in case of the levy on land of an execution issued by a justice of the peace.

67-2721. Rules and regulations.—The commissioner of finance and taxation is authorized to make and promulgate rules and regulations, not inconsistent with this chapter, for the purpose of carrying out the provisions of this chapter, which rules and regulations, when approved by the attorney-general, and when promulgated and published, shall have the force and effect of law.

67-2722. Expenses of administration.—Said commissioner may expend so much of two and one-half per cent (2½%) of the amount received hereunder each year as may be necessary to defray the expenses and cost of litigation arising in the administration of this chapter.

67-2723. Penalties for failure to make reports or pay tax.—The willful failure or refusal of any corporation or joint-stock association to pay the tax or make re-

ports as hereinabove required shall be a misdemeanor and subject it to a fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000).

67-2724. Use of information from returns.—Except in accordance with proper judicial order or as otherwise required by law, it shall be unlawful for the commissioner of finance and taxation, and duty, agent, clerk, or other officer or employee to make known in any manner the amount of income or any particulars set forth in any report or return required under this chapter; provided, nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof; or the use of such reports or returns by legal representatives of the state in any suit or suits for the collection of said tax or any part thereof, or for the penalty and interest imposed by this chapter. A violation of any of the provisions of this section shall be a misdemeanor punishable by fine of not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding one (1) year, or both, at the discretion of the court; provided, however, the commissioner of finance and taxation may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax similar to that imposed by this chapter, or the authorized representative of either such officer, to inspect the tax return of any corporation, or may furnish to such officer or to his authorized representative an abstract of the return of any corporation or supply him with information concerning any item contained in any return or disclosed by the report of any investigation of any return; but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes or regulations of the United States or of such other state,

as the case may be, grant substantially similar privileges to the governor or the proper officers of this state charged with the administration of this chapter.

APPENDIX E.

OPINION OF THE 19th JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, IN COLONIAL PIPELINE COMPANY vs. ASHTON J. MOUTON, COLLECTOR OF REVENUE.

(Filed June 7, 1968.)

The court will not go into detail about the issues involved and the facts as shown by the record in this case except to say that in 1963 the Collector of Revenue of the State of Louisiana made a proposed assessment of a corporation franchise tax against this plaintiff, and this plaintiff paid the proposed assessment under protest with notice of its intention to bring suit for a refund of the amount so paid. Briefly stated the facts dealing with the operation of this plaintiff are that it operates as a common carrier a pipeline from at or near Houston, Texas to Linden, New Jersey, which is a part of the greater New York area. This pipeline passes through several states. The facts show that it transports liquid fuels only. It does not transport any natural gas nor does it transport crude oil. It receives these products chiefly from the State of Texas and the State of Louisiana with minimal additions in the State of Mississippi. From that point on up to the northeastern terminal of the pipeline it distributes these products. There is no evidence of any incidents where plaintiff received any product in Louisiana and distributed the same product in Louisiana. Therefore, it is beyond any shadow of a doubt engaged only in interstate commerce. There is considerable testimony in the

record, testimony and documentary evidence dealing with the construction of this pipeline and dealing with the installation of stations along the line. It has been shown that this corporation qualified to do business in Louisiana in interstate commerce, and it is suggested and is probably true that this was done to facilitate the right of expropriation for rights of way. Louisiana, more particularly the City of Baton Rouge, is headquarters for the western division of this pipeline, there being further up the line a central division and then an eastern division. The western division is composed of that part of the pipeline in the State of Texas, all of it that is in the State of Louisiana, all of it that is in the State of Mississippi, and to its station at Moundsville, Alabama, which is said to be near the City of Tuscaloosa. The general manager of the western division, Mr. Franklin B. Whitaker, Jr., was the chief witness in this case, in fact was the only witness who gave oral testimony. It does not seem necessary to undertake an elaboration of his testimony but it suffices to say that it bears out the conclusions that the court has reached in this case that anything and everything done by this corporation since its original entry into the State of Louisiana has been purely incidental to its business as a common carrier engaged solely in interstate commerce.

Among all the cases cited in memoranda and discussed in argument, the one case that stands out in the mind of the court is the case of *Memphis Natural Gas Company v. Stone,* cited in both memoranda and referred to by counsel for both parties in argument. The Supreme Court of the United States in that case held the Mississippi tax to be valid because the Supreme Court of the State of Mississippi had given an interpretation of its statute which met objections that had been before the court prior to that time, and held that the tax was levied on the enjoy-

ment by the corporation of the protection of the laws of the state and the powers, rights, privileges and immunities derived from that state. Such is not the language of the statute involved in this case. It levies this tax for the privilege of carrying on or doing business, the exercising of its charter or the continuance of its charter within this state. In this court's opinion where the record shows as it does in this case that the privilege of carrying on or doing business is here limited strictly to the privilege of carrying on or doing an interstate business, the exercising of its charter or the continuance of its charter within this state deals with a charter of a corporation that is strictly engaged in interstate commerce. There is the difference between the Mississippi statute and the statute here before us.

One thing in connection with Mr. Whitaker's testimony in this case that I tried to think of a moment ago and couldn't remember it, and I think it is probably of considerable significance, he said that Colonial has never owned any interest in the products that it moves through its pipelines. I must say at the moment I cannot see any great importance in that, but that is a part of the record in the case, that it is strictly limited to the transportation of products owned by others.

To sum it up, it is the opinion of this Court that the imposition of this tax to facts found in this case is unconstitutional in that it violates the commerce clause of the Constitution of the United States.

There is therefore judgment in favor of this plaintiff for the amount sued for, that is, the refund of the tax heretofore paid to the defendant under protest.

COLEMAN LINDSEY,
Judge.

May 20, 1968.